

**AGENDA ITEM 3b
REAL ESTATE AUDIT FINDINGS HIGHLIGHTS
AS OF SEPTEMBER 30, 2010**

Significant Real Estate Findings for First Quarter 2010–11

Fee and Expense Findings:

- **Questioned Fee Calculations of Various Legacy Projects**

Legacy Partners 1002, LLP – General Partner Level: The external auditors took exceptions to the following developer or management fees:

Legacy charged developer fees to the Hollywood and Vine Apartment Project of \$4,629,938 for fiscal years 2007 and 2008. The external auditors calculated the fees at \$4,427,176 creating an over-billing in the amount of \$202,472.

Legacy charged developer fees to the Memorial project of \$1,344,632 for fiscal years 2007 and 2008. The external auditors calculated the fees at \$1,296,593 creating an over-billing in the amount of \$48,039.

Legacy charged construction management fees to the Hollywood and Vine Apartment Project of \$497,455 for fiscal years 2007 and 2008. The external auditors calculated the fees at \$507,182 creating an under-billing of \$9,727.

Legacy charged \$117,421 in construction management fees to the Memorial project for fiscal years 2007 and 2008 and the external auditors calculated the fees at \$107,680 creating an over-billing of \$9,741.

Status: IN PROGRESS. Legacy proposed to refund a portion of the over-billings and accepted the reimbursement of the under-billing. The Investment Office is currently reviewing this issue.

- **Questioned Equity Interest Expense**

Legacy Partners 1002, LLP – General Partner Level: The external auditors questioned \$444,576 or 15.37 percent interest charged to the Legacy Partners Affordable Housing Fund (LPAHF) due to out of pocket pre-construction costs. Legacy did not provide auditable documentation requested that support the total pre-construction costs. Further, the external auditors calculated the interest rate in 2006 was approximately 12 percent. If Legacy is allowed to bill the pre-construction costs, then the external auditors recommend allowing 12 percent interest instead of the 15.37 percent charged.

Status: IN PROGRESS. The Investment Office is currently reviewing this issue.

- **Questioned Bonus Expense**

Legacy Partners 1002, LLP – General Partner Level: The external auditors questioned \$101,700 of costs billed for closing bonuses to Senior Managers for two projects (Hollywood and Vine Apartment Project and Memorial Project). Section 3.05 of the Agreement does not allow bonuses.

Status: IN PROGRESS. Legacy proposed to reimburse the fund \$2,000 for bonuses given to staff with no assigned duties. The Real Estate Unit is currently reviewing this finding.

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- **Political Contributions Disallowed**

Legacy Partners 1002, LLP – General Partner Level: The external auditors took exceptions to \$688 in fiscal year 2007 and \$1,408 in fiscal year 2008 as political contributions billed for the National Multi-Family Association under the Hollywood and Vine Apartment Project.

Status: IN PROGRESS. Legacy agreed to refund the questioned costs totaling \$2,096.

- **Questioned Entertainment Expenses**

Legacy Partners 1002, LLP – General Partner Level: The external auditors questioned \$14,121 in entertainment expenses.

Status: IN PROGRESS. Legacy agreed to refund LPHAF in the amount of \$14,121.

- **Questioned Entertainment Expenses**

Legacy Partners 1002, LLP – General Partner Level: The external auditors questioned \$18,508 for travel costs charged to the Memorial project in fiscal year 2007, which includes \$7,572 in travel costs directly related to trips taken by a Non-Memorial staff member.

Status: IN PROGRESS. Legacy agreed to \$8,326 of the questioned costs, but disagreed with \$7,572 for travel charges related to the Non-Memorial staff. The Investment Office is currently reviewing this issue.

- **Asset Management Fees Incorrectly Calculated**

Institutional Mall Investors, LLC – Miller Capital Advisory, Inc. General Partner Level: The external auditor questioned \$4,003 in asset management fees due to the incorrect use of the fair market value for one of the properties instead of the appraised value reflected in the quarterly report.

Status: COMPLETE. Miller Capital Advisory, Inc. recalculated the asset management fee and credited \$8,005 of overbilled amounts against the amount owed for third quarter 2009 asset management fees.

- **Questioned Project Executive Costs**

Legacy Partners 1002, LLP – General Partner Level: The external auditor questioned \$271,698 in compensation for the Concrete Vice-President charged to the Hollywood and Vine Apartment Project. This cost is considered administrative in nature and should be covered by the Contractor's fees. Further, the external auditors noted that the billing rate invoiced is not consistent with the contractual rate for project executive.

Status: IN PROGRESS. The Investment Office is currently reviewing this issue.

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- **Questioned Commissioning, Quality Control, and Safety Managers Costs**

Legacy Partners 1002, LLP – General Partner Level: The external auditors questioned \$382,809 in compensation for the Commissioning Manager (\$48,840), Quality Control Manager (\$43,426), Director for Safety (\$44,000), and for a Corporate Safety Manager (\$246,543). The external auditor interpreted the contract to exclude these costs as they are administrative in nature and should be covered by the Contractor's fees.

Status: IN PROGRESS. The Investment Office is currently reviewing this issue.

Internal Control and Accounting Findings:

- **Questioned Accounting Rebills**

Legacy Partners 1002, LLP – General Partner Level: The external auditors took exceptions to \$225,346 of accounting rebills. The accounting rebills are costs allocation to the LPAHF from its affiliate, Legacy Partners Residential Development, Inc., for performing various accounting functions. The allocations to all projects are based on estimates rather than actual. The external auditors requested detailed supporting documents for the actual costs for fiscal years 2007 and 2008 and Legacy stated that actual costs do not exist.

Status: IN PROGRESS. The Investment Office is currently reviewing this issue.

- **Questioned Payroll Testing**

Institutional Mall Investors, LLC – Miller Capital Advisory, Inc. Property Level: KGIM – The Meridian: During a sample review of payroll charged to the property, the external auditors noted that the 10 percent "Admin Downtown" fee is included in the payroll charge. Administrative fees are considered to be overhead costs of the property manager. This fee is estimated at \$14,123 for 2008 and \$7,215 for the first six months of 2009.

Status: IN PROGRESS. The general partner is reviewing if the expense is "overhead costs" or can be tied directly to a property. If the expense cannot be tied directly to a property, then it will be categorized as a non-allowable cost and the property manager will be required to reimburse the owner for no-property expenses.

Leasing and Tenant Findings:

- **Tenant Complaint Log Not Maintained**

Institutional Mall Investors, LLC – Miller Capital Advisory, Inc. Property Level: The Shoppes at Grand Prairie: Property management has not maintained a tenant complaint log in accordance with the agreement. During fieldwork, the property management indicated that they will create a tenant complaint log going forward.

Status: COMPLETE. The property manager has implemented a tenant complaint log.

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- **Questioned Property Management Agreements**

Institutional Mall Investors, LLC – Miller Capital Advisory, Inc. Property Level: Mount Pleasant Towne Center: The property management agreement: (1) Does not include a Responsible Contractor Program (RCP) compliance requirement; (2) Does not include a non-discrimination clause and the requirement to include this clause in third-party contracts; (3) Exhibit B-2 section 4 of the Agreement includes former employees of property management as approved "Staff".

Status: IN PROGRESS. (1) The property manager has submitted the RCP certification (2) The management agreement will be amended to include the non-discrimination clause (3) The property manager will update the approved "staff" on the Agreement.